IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.5l0 of 1994

with

Civil Applciation No.l503 of 2005

Smt Sudha Anant Patwardhan... petitioner

vs

Union of India and ors.. respondents

Mr.M.K.Nesari for petitioner

Mr. N P Deshpande AGP for Respondents

CORAM: A.P.SHAH &

D.Y.CHHANDRACHUD JJ.

Dt l5.7.2005

ORAL JUDGMENT: (Per A.P.Shah J.)

. The Industries, Energy and Labour Department vide its Order No.MMN/2585/50256/ (3980)/IND-9 dated l.l.l988 had granted renewal of mining licence for Silica sand for 20 years over the area of 40-72-24 Hectors of S.Nos l65,l66,and l75 of Village Pondaghat in favour of the petitioner's husband late Shri A R Patwardhan. The lease was executed on 3l.8.l993. In the meanwhile Shri Patwardhan died and after his death the lease hold

rights and benefits vested in the petitioner. The Condition No.(i) of the Lease Order dated l.l.l988 reads as follows:

> "The lessee should not extract the minerals from the following area as the same is within the distance of 50 meters from the electric line road, and river.
>
> | S.No. | Electric line | Roadm | River | Total Area Hectares |
> |---|---|---|---|---|
> | l.l65 | 6-l6-00 | 2-l0-00 | l-0l-00 | 9-29-00 |
> | 2.l66 | - | 0-54-75 | - | 0-54-75 |
> | 3.l75 | 2-37-00 | - | - | 2-37-00 |
> | | | | | -------- |
> | | | | | 12-20-75" |

2. On 7.3.l99l, it was noticed by the Mining Inspector that the petitioner had operated in the area (out of S.No.l65) which was not granted to her and which was lying within 50 meters from the electric line. The Mining Inspector recorded measurement and panchanama was made which revealed that the petitioner had unauthorizedly extracted 279 brass i.e. l763 M.T of Silica sand. Therefore a notice under section 48(7) of the Maharashtra Land Revenue Code,l966, hereinafter referred to as

the MLRC, was issued calling upon the petitioner to show cause as to why she should not be penalised. The petitioner submitted her reply dated 20.6.l993. Taking into consideration the facts of the case and the reply of the petitioner, the Collector, Sindhudurg passed Order No.MNN/ SR/Working/72 dated l5.l2.l992 imposing penalty of Rs.2,82,080 under section 48(7) of the MLRC. The petitioner preferred writ petition to this court in which an order was passed on 5.4.l993 remanding the matter to the Collector and directing the petitioner to appear before the Collector and the Collector was directed to give the petitioner due opportunity of personal hearing and pass orders according to law.

3. The petitioner submitted her written say through her advocate on l9.4.l993 and requested for personal hearing. Thereafter hearing was granted on 4.7.l993. The Collector, after taking into consideration the reply of the petitioner passed the order dated l9.8.l993 directing the petitioner to pay the amount of penalty and royalty of Rs.2,82,080 within one month, failing which it shall be recovered as arrears of land revenue . The legality and validity of the said order of the Collector is questioned in this petition under Article 226 of the Constitution.

4. Two points arise for determination in this petition. First, the legislative competence of the State Legislature to enact section 48 of the MLRC and secondly the validity of the above-mentioned order passed by the Collector dated l9.8.l993.

5. Mr.Nesari, learned counsel for the petitioner submitted that Silica sand is not a minor mineral within the meaning of section 3(e) of the Mines and Minerals (Development and Regulation) Act, l957. The Central Act governs the activities of mining for Silica sand vide sections 4(a),5,8,9,9(a), l0,ll,l2,l3,l4 and 2l. The legislative competence with regard to the said mineral is exclusively with the Union Parliament by reason of declaration under section 2 of the Mines and Minerals (Development and Regulations) Act, l957 and therefore the State Legislature has lost its legislative competence to enact section 48(7) of the MLRC. Therefore the provisions of section 48(7) of the MLRC are ultravires the Constitution of India and, consequently any order of penalty passed thereunder is void and is without authority of law.

6. At the outset we may point out that the issue of constitutional validity of section 48(7) of MLRC

is concluded by the decision of the Division Bench of this Court in the case of Hari Construction vs State of Mah and ors,l995 (l) Mah L R 679. In that case the petitioners had entered into a contract with the Railways for the purpose of raising embankments for Railway tracks. For the purpose of raising the embankments filling material was required, for the purpose of which the petitioners used soil, murum, sand and earth. The said material was obtained, according to the petitioners, both from the private owned land as well as from the lands owned by the Government. According to the petitioner they were informed by the Railways that since the project was a special priority project for Konkan Railways for which necessary land was given free of costs by the State Government, no royalty would be paid for the materials required for the said project. The Collector issued show cause notice under section 48(7) of the MLRC and levied penalty on the basis of three times of the market value of the material extracted by the petitioners. The petitioners challenged the validity of section 48(7) of the MLRC on the ground that the State Legislature was not competent to enact section 48(7) of the MLRC since after declaration under section 2 of the Mines and Minerals (Development and Regulations)

Act, l957, entire field relating to the grant of mining lease and prospecting licence of minor minerals came to be occupied by the Parliament and consequently the State Legislature being only delegated authority empowered to prescribe rules relating to the minor minerals under section l5 of the said Act was not competent to enact law relating to minor minerals which could only be done under Entry 54 of Union List by the Parliament. The Division Bench of this court negatived the challenge to the constitutional validity of section 48(7) of the MLRC and held the said section to be intravires. Kapadia J, as the learned Judge then was, speaking for the Bench observed as under:

> "7. In the light of the various provisions of the Land Revenue Code as well as the provisions of Mines and Minerals (Regulation and Development) Act l957 the short question which we have to examine is whether the declaration under section 2 of the said Act l957 excludes the power of Collector to levy penalty without prejudice to any other mode of action under section 48(7) of the Code, l966. The scope of sections 2 and l5 of the Act, l957 has been considered by the Supreme Court in several matters. In the

case of Baijnath Kedia vs The State of Bihar and ors, reported in AIR l970 SC page l436 the Supreme Court laid down that the said Act l957 which came into force on lst June, l938 applied to the whole of India. By definition "minor minerals" were defined to mean building stone, gravel, bolder, shingle, murum, clay, sand used for prescribed purposes. In that case the question arose as to whether the Bihar Legislature was competent to enact Bihar Land Reforms Act (30 of l950) (as amended by Bihar Act 4 of l965). It was contended that the State Legislature was not competent to enact the second proviso to section l0(2) of the said Act l950 in view of section 2 read with section l5 of the Mines and Minerals (Regulations and Development) Act l957. By reason of the impugned proviso the State Government was empowered to notify the existing mining lease after the enactment of the said Act,l957.While striking down the Bihar Law the Supreme Court held that it was open to the Parliament to declare that the control should rest in the Central Government. However to what extent such authorities can go is for the Parliament to

decide and this must be commensurate with public interest. Once this declaration under section 2 of the Act l957 is made and the extent laid down, the subject in application to the extent laid down becomes an exclusive subject for Legislature by the Parliament.Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional. That the Rules framed by the State Government does not make any difference once the topic is withdrawn from the State. After analysing section 2 and sections l4 and l5 of the said Act. the Supreme Court observed that the entire legislative field in relation to minor minerals had been withdrawn from the State Legislature by the said Act l957.

8.The above discussion shows that the said Act l957 takes over the regulation of mines and development of minerals to the Union to the extent provided. It deals with minor minerals separately from other minerals. The subject of legislation in respect of minor minerals is covered by the said Act l957 but to a specified extent and to that

extent the powers of State Legislature are wanting . In the present case the only question we are required to answer is whether the State Legislature was entitled to enact section 48(7) to the Maharashtra Land Revenue Code,l966. In the present case, we are required to answer the question as to whether the subject of revenue administration stood withdrawn from the State Legislature by virtue of the said Act l957. It is contended on behalf of the petitioners that once the topic is taken over by the Central Legislature the State Government was not competent to enact section 48(7) of the Maharashtra Land Revenue Code, l966 because the entire topic fell within the competence of the Parliament. We do not see any merit in the said contentions. As stated hereinabove, we have to examine the pith and substance of law in question viz the Maharashtra Land Revenue Code, l966. As stated hereinabove the object of the said enactment is revenue administration. The object of the said Act is to assess,charge and collect revenue which includes penalty on account of illegal extraction of minerals vested in the State

Government. As stated hereinabove under section 48(l) where minerals vests in the State Government they are entitled to proper enjoyment including the power of sale or disposal of the said minerals and if the said minerals are unauthorizedly removed then the Collector under section 48 is required to charge penalty which is in the nature of damages on account of loss suffered by the Government or unauthorised extraction of minerals. We can look at the problem from another angle also. Under section 2(l9) of the Maharashtra Land Revenue Code, l966, land revenue means all sums and payments, any cess or rate authorised by State Government and includes premium, rent or any other payment provided under any Act, contract or deed on account of any land. Revenue administration also includes rights of a Collector to impose penalty for unauthorised excavation of minerals which have vested in the Government. The topic covered by section 2 read with sections l4 and l5 of the Mines and Minerals (Regulation and Regulations) Act l957 expressly deals with grant of mining lease or prospecting licences

relating to minor minerals. Revenue administration includes imposition of penalty for unauthorised or illegal excavation of the minerals which vests in the State Legislature by the said Act l957. In fact, land revenue is a State subject under List II of the Seventh Schedule to the Constitution. In the circumstances, there is no merit in the contention raised on behalf of the petitioners that the State Legislature has no competence to enact the Maharashtra Land Revenue Code and particularly section 48(7) of the said Code, l966. The two acts operate in different and distinct sphere. For the above reason, we do not find any merit in the contention advanced on behalf of the petitioners that section 48(7) of the Maharashtra Land Revenue Code, l966 is ultra vires the Constitution".

7. Mr Nesari submitted that the ratio of the Division Bench in Hari Construction Case was confined to minor minerals and has no application to the present case which relates to Silica sand, which is a major mineral. We are unable to accede to the submission of the learned counsel.It is well

settled that the State is the owner of all mines and minerals whether minor or major, within its territory and the minerals vest with the State. It has been so held in the case of Amritlal Nathubhai Shah vs Union Government of India, (l976) 4 SCC l08. The Act of l957 takes over regulation of mines and development of minerals to the extent provided and to that extent the powers of the State Legislature are wanting. The object of the MLRC is revenue administration. The object is to assess, charge and collect revenue which includes penalty on account of illegal extraction of minerals vested in the State Government. Under section 48(l) where minerals vest in the State Government they are entitled to proper enjoyment including power of sale or disposal of the said minerals and if the said minerals are unauthorizedly extracted then the Collector under section 48 is required to charge penalty which is in the nature of damages on account of loss suffered by the Government for unauthorised extraction of minerals. Under section 2(l9) of the MLRC land revenue means all sums and payments,any cess or rate authorised by State Government and includes premium, rent or any other payment provided under any Act, contract or deed on account of any land. The revenue administration also includes right of the Collector to impose

penalty for unauthorised extraction of minerals which have vested in the Government. Land Revenue is the State subject under List II of Seventh Schedule of the Constitution. There is thus no merit in the submission of Mr.Nesari that the State Legislature has no competence to enact the MLRC and particularly section 48(7) of the MLRC. Two Acts operate in different and distinct spheres. Therefore the challenge to the constitutional validity of section 48(7) of the MLRC is liable to be rejected.

8. Coming then to the merits of the case, as noticed earlier, the petitioner has challenged the validity of the impugned order of the Collector dated 10.8.1993. Mr.Nesri submitted that the impugned order was passed without application of mind. The order speaks of electric poles and line but does not refer to the High Tension Wire allegedly passing through the land and the pits allegedly dug by the petitioner. The show cause notice is vague and devoid of particulars as it does not refer to the plan or location of High Tension Wire and pits. The order is against the principles of natural justice as the petitioner was not given opportunity to cross examine the persons whose statements were relied upon by the Collector. The alleged weight of 279 brass of extracted

material was highly exaggerated considering the size and dimension of the pits allegedly dug by the petitioner.

9. We find no substance in any of the submissions of Mr.Nesari. The show cause notice dated 10.8.1993 clearly mentions the survey number in which unauthorised extraction took place. The show cause notice also refers to the lease renewal order in which the area details have been clearly mentioned. The show cause notice also informs the petitioner that he has carried out extraction within 50 meters of the electric pole/line thereby attracting penalty under the provisions of sec.48(7) of the Maharashtra Land Revenue Code passing through the land. The notice also gives details of excavation amounting to 279 brass of Silica sand. If the petitioner felt that she needed more details, she could have made a request to this effect in her reply to the notice. However, the petitioner did not do so. The demarcation plan which bears the signature of the authorised representative of the lessee clearly shows existence of several electric poles and electric line passing through the land. The lease order itself makes this clear in which area of 6.16 H out of survey no.165 has been deleted because the same falls within the distance of 50 meters from

the electric line. The supervisor of the petitioner has clearly admitted that Silica sand was excavated unauthorisedly from survey no.165. The panchanama made by the Mining Inspector in presence of the employees of the petitioner indicates that detailed measurements were carried out on the basis of which the total excavation was calculated lat 279 brass. This calculation was verified and found to be correct by the employees of the petitioner who have signed the panchanama as witness. Thus, there is no substance in the challenge to the validity of the order. In the result, petition is dismissed. Rule is discharged. C.A.stands disposed of.